IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 982 OF 2004

Tehmi Dady Shroff, through
her Power of Attorney Holder ...Petitioner

Versus

Laxman Ramchandra Kasurde
through L.Rs.and Ors. ...Respondents

.....

Mr. Uday Warunjikar, counsel for Petitioner

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 31ST MARCH, 2005

P. C.:-

1. Heard Mr. Warunjikar, the learned counsel for the petitioner who represents the plaintiff in Regular Civil Suit No. T 203 of 1969 filed before the learned C.J.J.D. at Wai. The said suit has been filed against the defendant for possession of land in Survey No. 33A, 31/1, 32/2 and 64/A which are respectively final plot Nos. 421, 422, 424 and 243 situated at Panchgani. The defendant had contended while opposing the said suit that he is the protected tenant of the said land for several years and therefore, he could not be evicted unless the landlord takes out certain proceedings contemplated under the Tenancy Act i.e. the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act" for short).

The learned C.J.J.D. by his order dated 18.11.1971 referred the issue of tenancy to the Revenue Court i.e. the Agricultural Lands Tribunal presided over by the Tahsildar Mahabaleshwar.

2. The Tahsildar in his order dated 12.7.1973 held that the defendants are the tenants. However, instead of concluding his order on recording such findings, he further went to make the following observations:-

> "On going through the record and written argument and various cases cited in the arguments the following facts are clear:-
>
> a. That the land is the agricultural land;
>
> b. That it is included in T.P. slum of Panchgani.
>
> c. That the defendant No.1 is a tenant as manager of joint Hindu family.
>
> . As per proviso of section 43C of B.T. & A.L. Act the rights accord column the act is on after or after 18.12.1948 are not applicable because of the subsequent

amendments and the status of protected tenant remained the same"

3. The petitioner therefore, filed Tenancy Appeal No.24 of 1973 before the S.D.O. and the same was dismissed by order dated 25.6.1975 and the order passed by the Tahsildar came to be confirmed. The Revision filed before the M.R.T. also met with the same fate i.e. the Revision was rejected on 9.11.1979.

4. Mr. Warunjikar, the learned counsel for the petitioner submitted that he has no grievance on the findings recorded by the Tahsildar regarding the status of the defendant as a tenant. His main grievance is regarding the applicability of the Act. It is submitted by Mr. Warunjikar that the suit land has always been a part of the development plan of Panchgani Municipal Council and in this regard he has relied upon the certificate dated 19.7.2003 issued by the Panchgani Giristhan Municipal Council.

5. The location of the suit land/plots and whether the same at the relevant time was part of the development plan of Panchgani town or not are the issues which are required to be decided on the basis of the evidence that may be lead by the parties in

the pending suit i.e. Regular Civil Suit No. 203 of 1969. The suit has been pending for the last about 36 years and it certainly deserves expeditious decision. Once the issue regarding tenancy has been decided, the further rights of the parties can be adjudicated on the basis of evidence that may be adduced by them before the trial Court and, therefore, the suit must proceed for trial on the basis that the status of the defendant as a tenant on the suit land is duly established.

6. Hence, the petition is disposed of by directions that the issue of location of the suit land/plots be decided on the basis of the evidence that may be adduced by the respective parties and on its own merits so far as the rights of the respective parties are concerned and undoubtedly without being influenced by the findings recorded by the Revenue Authorities regarding the location of the land. It is further directed that the Regular Civil Suit No. 203 of 1969 shall be heard and decided as expeditiously as possible and in any case within a period of six months from the receipt of writ from this Court.

7. Writ to go forthwith to the trial court.